In the United States Patent and Trademark Office

Appellants:	Teresa M. Zander; Garry R. Woltman	Docket No.:	18874
Serial No.:	10/781,432	Group:	3761
Confirmation No.:	3485	Examiner:	Hill, Laura C.
Filed:	February 18, 2004	Date:	June 27, 2006
For:	EMBOSSED ABSORBENT ARTICLE		

Amended - Appeal Brief Transmittal Letter

Mail Stop Appeal Brief - Patents
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir

This amended Appeal Brief is filed in response to the Office Communication having a mailing date of 06/14/2006 for the above-identified application. The Appeal Brief pertains to the Final Rejection having a mailing date of 12/16/2005. The Notice of Appeal was filed March 7, 2006.

Please charge any prosecutional fees which are due to Kimberly-Clark Worldwide, Inc., deposit account number 11-0875.

Respectfully submitted,

Teresa M. Zander ET AL.

By: Paul Yee
Paul Yee
Registration No.: 29,460

CERTIFICATE OF TRANSMISSION

I, Judith M. Anderson, hereby certify that on June 27, 2006 this document is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (571) 273-8300.

Typed or printed name of person signing this certificate:

Judith M. Anderson

Signature:

Judith M Anderson

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellants:	Teresa M. Zander, et al.	Docket	18,874
Serial No.:	10/781,432	Art Unit:	3761
Confirmation	3485	Examiner:	Hill, Laura C.
Filed:	February 18, 2004	Date:	June 27, 2006
For:	EMBOSSED ABSORBENT ARTICLE		

APPEAL BRIEF – Amended

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This amended Appeal Brief is filed in response to the Office Communication having a mailing date of 06/14/2006 for the above-identified application. The Appeal Brief pertains to the Final Rejection having a mailing date of 12/16/2005. The Notice of Appeal was filed March 7, 2006.

REAL PARTY IN INTEREST

The real party in interest is Kimberly-Clark Worldwide, Inc., the assignee of all rights to the invention of the above-identified application.

RELATED APPEALS AND INTERFERENCES

To the knowledge of appellant, appellants' legal representative, or assignee, there are no other known related appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS

Claims 1 and 3 – 27 are pending in the application.

Claims 1 and 3 – 27 have been rejected.

Claim 2 has been canceled.

Claims 1 and 3– 27 are under appeal.

STATUS OF AMENDMENTS FILED SUBSEQUENT TO FINAL REJECTION

No amendments were filed subsequent to the Final Rejection.

SUMMARY OF THE INVENTION

The invention of the sole independent Claim 1 provides:

An article (20) having a longitudinal direction (22), a transverse cross-direction (24), a longitudinal centerline (52), and a transverse centerline (53), the article comprising a deformation-control member (33) which has a pair of longitudinally-opposed half-portions positioned on opposite sides of the transverse centerline, a medial section (38), and a stiffened region. Particular disclosure can, for example be found in the original specification at FIG. 1; paragraph *[44]* on page 7, lines 11 – 32; and paragraph *[46]* on page 8, lines 7 - 14.

The article, when in its plan view condition, has a configuration wherein

said stiffened region includes a first array (40) of individual, stiffening elements (35), and at least a second, differently arranged array (50) of individual, stiffening elements (37); (e.g. paragraph *[46]*);

said first array of stiffening elements is located in a corresponding first, longitudinal half-portion of the deformation-control member and has a first, convergently arranged nose-end (70), and a first, relatively divergently arranged tail-end (74); (e.g. paragraph *[46]*, and paragraph *[47]* on page 8, lines 15 – 27);

said first nose-end of the first array is positioned toward a central region of the article, said first tail-end of the first array is positioned to diverge toward a first longitudinal end region (72) of the article, with the nose-end and tail-end of the

first array aligned along the longitudinal direction; (e.g. paragraph *[47]*, and original FIG. 1);

said first array of stiffening elements is configured to substantially avoid intersecting in said medial section of said deformation-control member; (e.g. paragraph *[44]);*

said second array of stiffening elements is located in a corresponding second, longitudinal half-portion of the deformation-control member and has a second, convergently arranged nose-end (78), and a second, relatively divergently arranged tail-end (80); (e.g. paragraph *[47]);*

said second nose-end of the second array is positioned toward the central region of the article, said second tail-end of the second array is positioned to diverge toward a second longitudinal end region (72a) of the article, with the nose-end and tail-end of the second array aligned along the longitudinal direction; (e.g. paragraph *[47]* and original FIG. 1);

the second end region (72a) of the article is located longitudinally opposite the first end region (72) of the article; (e.g. paragraph *[46]* and original FIG. 1);

said second array of stiffening elements is configured to substantially avoid intersecting in said medial section of said deformation-control member; (e.g. paragraph *[44]);* and

said second array of stiffening elements have a counter-positioned configuration which is in a longitudinally opposed, oppositely aligned arrangement, relative to the first array of stiffening elements. (e.g. paragraph *[44]).*

GROUNDS OF REJECTION PRESENTED FOR REVIEW

Grounds 1

Claims 1, 4, 9 – 11, 14 – 15, 17 and 19 – 23 have been deemed unpatentable over U.S.P. Publication 2002/0040212 to Drevik, under 35 U.S.C. §102(b).

Grounds 2

Claim 1 has been deemed unpatentable over U.S.P. 6,222,092 to Hansen et al., under 35 U.S.C. §102(b).

Grounds 3

Claims 3, 5 – 8, 13, 18 and 27 have been deemed unpatentable over U.S.P. Publication 2002/0040212 to Drevik, under 35 U.S.C. §103(a).

Grounds 4

Claims 12, 16 and 24 – 26 have been deemed unpatentable over U.S.P. Publication 2002/0040212 to Drevik in view of U.S.P. 6,222,092 to Hansen et al., under 35 U.S.C. §103(a).

ARGUMENTS FOR REVERSAL

The claims on appeal

Claims 1 – 27 are on appeal, and are set forth in the enclosed CLAIMS APPENDIX.

Prior art relied on by the Examiner

In the Final Rejection, the Examiner has relied on the following art:

U.S.P. Publication 2002/0040212 to Drevik
U.S.P. 6,222,092 to Hansen et al.

Arguments

For the reasons set forth below, Appellants respectfully submit that the Examiner's rejection should be reversed. It is also respectfully submitted that for the reasons set forth below, the claims do not stand or fall together.

Grounds 1

It is respectfully submitted that Claims 1, 4, 9 – 11, 14 – 15, 17 and 19 – 23 are patentable over U.S.P. Publication 2002/0040212 to Drevik (Drevik). Accordingly, the Examiner's action under 35 U.S.C. §102(b) should be reversed.

As described by Drevik, an absorbent article includes an elongate absorbent core having an upper surface and a lower surface, a pair of opposed longitudinal edge portions terminating in longitudinal edges and a pair of opposed transverse edges, the

core having a first end portion, a second end portion and a central portion located between the end portions; a liquid permeable topsheet extending over the upper surface; a liquid barrier backsheet covering the lower surface of the absorbent core; barrier strips, each of the barrier strips covering a respective longitudinal edge portion and forming a liquid-retaining pocket along a respective longitudinal edge portion; and a longitudinal elastic member arranged along each of the barrier strips that are placed along each longitudinal edge portion of the absorbent core, the elastic members extending in at least the central portion of the absorbent core; the elastic members each include a plurality of spacers arranged at a distance from each other along a length of the elastic members to create fluid conducting channels.

With regard to claim 1: The Examiner's assertions regarding claim 1, are apparently based on FIG. 1, ¶ [0029] lines 1-6, and ¶ [0032] lines 4-9. It is submitted that Drevik does not support the Examiner's positions.

When viewing FIG. 1 of Drevik, a person of ordinary skill would discern beads 54 or short cylinders 56 that are aligned along the relatively longer, longitudinal-direction of the article, and are arranged to extend crosswise, all parallel to one another along the relatively shorter, width-direction of the article. Since the beads or cylinders are aligned parallel to one another, the beads or cylinders are not arranged to diverge or converge from a common point. All of the beads or short cylinders have the same alignment. To the extent that the beads or cylinders are grouped together, the groupings have identical arrangements, and do not have an oppositely arranged, counter-positioned configuration. As a result, the structures taught by Drevik do not provide a deformation-control member having a selected stiffened region, in the configurations called for by Appellants' presented claim. The structures taught by Drevik do not provide a first array of stiffening elements having a first, convergently arranged nose-end, and a first, relatively divergently arranged tail-end. The Drevik structures also do not provide a differently arranged, second array of stiffening elements having a second, convergently arranged nose-end, and a second, relatively divergently arranged tail-end in which the second array of stiffening elements have a counter-positioned configuration which is

oppositely aligned along the longitudinal direction relative to the first array of stiffening elements, as called for by the claimed invention.

Moreover, the disclosures of Drevik in its ¶ [0029] and ¶ [0032] fail to cure the deficiencies of Drevik's FIG. 1. As taught by Drevik at ¶ [0029]:

> .... The beads **54** serve as a spacing means **60** (as illustrated in FIG. **6** and **7**) between the barrier strips **46**, **48** and the top sheet **36** and will create fluid conducting channels **62** (as illustrated in FIG. 7) between the barrier strips **46**, **48** and the top sheet **36** in a direction from the center of the sanitary napkin **10** to the longitudinal sides of the sanitary napkin **10**. The channels **62** are especially advantageous when the barrier strips **46**, **48** are pressed against the top sheet **36** and the upper surface **14** of the absorbent core **12**, by an external force, e.g., tight trousers, or if the user is sitting down. The channels **62** then allow migrating body fluids to flow under the barrier strips **46**, **48** even when the barrier strips **46**, **48** are pressed against the top sheet **36**, thereby increasing the flow through the absorbent core **12** rather than through the barrier strips **46**, **48** or over the barrier strips **46**, **48**. ... (emphasis added)

As taught by Drevik at ¶ [0032]:

> In a second embodiment of the invention, and as illustrated in FIGS. 3, 6 and **7**, the elastic members **50**, **52** are broader than in the first embodiment and they are in the form of a string of short cylinders **56**. The short cylinders **56** serve as a spacing means **60** (as illustrated in FIG. 6 and **7**) between the barrier strips **46**, **48** and the top sheet **36**, and will create channels **62** between the barrier strips **46**, **48** and the top sheet **36** in a direction from the center of the sanitary napkin **10** to the longitudinal sides of the sanitary napkin **10**, and serves the same purpose as in the first embodiment. Here, short cylinder means a cylinder having a length less than the cylinder diameter. The cylinders may alternatively have other cross-sectional shapes, such as an oval shape. The cylinders may also have different diameters and/or different cross sections in the same string of cylinders. (emphasis added)

It is apparent that the further consideration of ¶ [0029] and ¶ [0032] of Drevik would still fail to disclose or suggest an article which includes a first array of stiffening elements having a first, convergently arranged nose-end, and a first, relatively divergently arranged tail-end which diverges toward a first end of the article, as called for by the claimed invention. Since the disclosed spacers are aligned parallel to one another, the spacers are not arranged to diverge or converge from a common point.

The paragraphs cited by the Examiner also do not disclose or suggest a differently arranged, second array of stiffening elements having a second, convergently arranged nose-end, and a second, relatively divergently arranged tail-end which diverges toward a second end of the article, as called for by the currently presented claims. Additionally, these paragraphs do not disclose or suggest an arrangement in which the second array of stiffening elements have a counter-positioned configuration which is oppositely aligned relative to the first array of stiffening elements, as called for by the claimed invention. It is, therefore, readily apparent that a proper consideration of FIG. 1, ¶ [0029], and ¶ [0032] of Drevik would not disclose or suggest the configurations called for by Appellants' currently presented claims.

Moreover, FIG. 4 of Drevik shows long cylinders 58 that are aligned along the article, and extend crosswise, all parallel to one another along the relatively shorter, width-direction of the article. Since the cylinders are aligned parallel to one another, the cylinders do not have an arrangement which diverges or converges from a common point. As a result, the additional consideration of the disclosure of FIG. 4 shows that Drevik does not disclose or suggest the invention called for by Appellants' currently presented claims.

Accordingly, Drevik does not disclose or suggest a configuration having a deformation control member with a stiffened region which includes a first array of individual, stiffening elements, and at least a differently arranged, second array of individual, stiffening elements, wherein each of the first and second arrays of stiffening elements have a convergently arranged nose-end, and a relatively divergently arranged tail-end, as called for by Appellants' presented claims. To the contrary, the spacers taught by Drevik are aligned parallel to one another, and are not arranged to diverge or converge from a common point. Neither does Drevik teach a configuration having a stiffened region wherein the first and second arrays of stiffening elements are counter-positioned, as called for by the claimed invention. Additionally, Drevik fails to disclose or suggest a configuration wherein each nose-end is positioned toward a central region of the article, and each tail-end is positioned toward a different end region of the article, as

called for by Appellants' currently presented claims. For the above reasons, it is submitted that claim 1 is patentable over Drevik.

With regard to claim 20: For the reasons previously set forth, Drevik does not disclose or suggest the configurations set forth in claim 1. In addition, Drevik does not teach a configuration wherein at least a portion of the stiffening elements are substantially curvilinear along their length dimensions in accordance with Appellants' specification and claims. Instead, the spacers are aligned along a straight line or along parallel straight lines. As a result, claim 20 is patentable over Drevik.

With regard to claim 21: For the reasons previously set forth, Drevik does not disclose or suggest the configurations set forth in claim 1. In addition, Drevik does not teach a configuration in which the deformation-control member includes an absorbent body; and the absorbent body has a relatively larger shaping layer and a relatively smaller supplemental layer. Instead, Drevik discloses an absorbent core that is configured as a single layer. Accordingly, claim 21 is patentable over Drevik.

With regard to claim 22: For the reasons previously set forth, Drevik does not disclose or suggest the configurations set forth in claim 1. In addition, Drevik does not teach a configuration in which the deformation-control member includes an absorbent body; the absorbent body has a relatively larger shaping layer and a relatively smaller supplemental layer; and the supplemental layer is located adjacent a bodyside of the shaping layer. Instead, Drevik discloses an absorbent core that has a single layer. As a result, claim 22 is patentable over Drevik.

With regard to claim 23: For the reasons previously set forth, Drevik does not disclose or suggest the configurations set forth in claim 1. In addition, Drevik does not teach a configuration in which the deformation-control member includes an absorbent body; the absorbent body has a relatively larger shaping layer and a relatively smaller supplemental layer; and the supplemental layer is located adjacent a garment-facing side of the shaping layer. Instead, Drevik discloses an absorbent core that has a single layer. Accordingly, claim 21 is patentable over Drevik.

When compared to Appellants' claimed invention, the structures taught by Drevik would be less able to provide desired regions of controlled flexibility and bending, and would be less able to provide desired levels of fit and comfort. It is, therefore, readily apparent that Drevik does not teach Appellants' claimed invention. Accordingly, the rejection of the claims as being unpatentable over Drevik under 35 U.S.C. §102 should be **reversed**.

Grounds 2

It is respectfully submitted that Claim 1 is patentable over U.S.P. 6,222,092 to Hansen et al. (Hansen). Accordingly, the Examiner's action under 35 U.S.C. §102(b) should be reversed.

Hansen discloses a disposable absorbent garment which has barrier elements on its inner liner to form barriers to the flow of urine across the liner surface. In one embodiment, the barrier elements are loops formed by rows of slits through the liner material, such that the slits form rows of strips. Central portions of the strips are forced out of the plane of the liner to form wide based loops or humps on the inner surface of the garment when the garment is in place about the body of a wearer. These elevated loops form rows of raised obstructions that act as urine flow interference barriers. In other embodiments, the loops are preformed on the surface of the liner layer, or are formed from interdigitating strips. The loops are preferably provided in a target area of the garment where urine impinges the liner surface. Garments intended to be worn by males may have the loops distributed primarily throughout a front crotch region, to interfere with the substantially tangential movement of urine across the liner layer. The garment diminishes leakage of urine out of the waistband of the garment, and inhibits migration of liquid waste within the diaper. Apertures formed under the loops provide an opening through which liquid waste enters the interior of the garment.

Hanson, however, does not disclose or suggest a configuration having a deformation control member with a stiffened region which includes a first array of individual, stiffening elements, and at least a differently arranged, second array of individual, stiffening elements, wherein each of the first and second arrays of stiffening

elements have a convergently arranged nose-end, and a relatively divergently arranged tail-end, and wherein the nose-ends and the tail-ends of the first and second arrays are aligned along the longitudinal direction, as called for by Appellants' presented claims. Neither does Hanson teach a configuration having a stiffened region wherein the first and second arrays of stiffening elements are counter-positioned and oppositely aligned in a longitudinally opposed configuration, as called for by the claimed invention. Additionally, Hanson fails to disclose or suggest a configuration wherein each nose-end is positioned toward a central region of the article, and each tail-end is positioned toward an end region of the article. To the extent that Hanson discloses rows of slits 50 and flexible loops that are pushed up between the slits, it is readily apparent that such slits would provide regions of weakness. To accommodate their pushed-up formation process, the loops are flexible. As a result, the slits and loops are not stiffening elements. Such areas of weakness and flexibility are clearly contrary to the stiffening elements called for by the claimed invention. As a result, when compared to Appellants' claimed invention, the structures taught by Hanson would be less able to provide desired regions of stiffness that can control flexibility and bending, and would be less able to provide desired levels of fit and comfort.

It is, therefore, readily apparent that Hanson fails to teach Appellants' claimed invention. Accordingly, the rejection of the claim 1 as being unpatentable over Hansen under 35 U.S.C. §102 should be **reversed**.

Grounds 3

It is respectfully submitted that Claims 3, 5 – 8, 13, 18 and 27 are patentable over U.S.P. Publication 2002/0040212 to Drevik. Accordingly, the Examiner's actions under 35 U.S.C. §103(a) should be reversed.

It is respectfully submitted that the Examiner's rejections under 35 U.S.C. §103, based on the teachings of the cited references are not proper, and that the teachings of the cited references do not render obvious a structure having the combination of components called for by Appellants' claimed invention. It is respectfully submitted that

the Examiner has not established "prima facie" that a proper combination of the cited references would disclose or suggest Appellants' claimed invention.

It is well accepted that, as a minimum, a prima facie case of obviousness must contain the following elements:

1) there must be a basis in the reference for a modification;
2) there must be a reasonable expectation of success -- obvious to "try" is not the standard; and
3) the prior art must render obvious the invention as a whole.

In addition, it is not appropriate to engage in hindsight. It is inappropriate to pick and choose isolated elements from various prior art references and combine them so as to yield the invention in question when such combining would not have been an obvious thing to do at the time in question. *Panduit Corporation v. Dennison Manufacturing Company*, 227 USPQ 337 (Fed. Cir. 1985).

The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. *In re Gordon*, 733 F.2d at 902, 221 USPQ at 1127. *In re Fritch*, 23 USPQ 2nd 1780, 1783-1784 (Fed. Cir. 1992).

It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. *In re Gorman*, 933 Fed. 2nd 982, 987. 18 USPQ 2d 1885, 1888 (Fed. Cir. 1991). *In re Fritch*, 23 USPQ 2nd 1780 at 1784 (Fed. Cir. 1992). One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. *In re Fine*, 837 Fed. 2d at 1075, 5 USPQ 2d at 1600. *In re Fritch*, 23 USPQ 2nd 1780 at 1784 (Fed. Cir. 1992). Where the cited references do not teach how to make the particular combinations needed to arrive at the invention called for by Appellants' claims, the claimed invention cannot be deemed "obvious". *Ex parte Levengood*, 1993.

It is also well established that a prior art reference must be evaluated as an entirety and that the prior art must be evaluated as a whole. *W.L. Gore and Associates, Inc. v. Garlock, Inc.*, 220 USPQ 303 (Fed. Cir. 1983). Where neither any reference

considered in its entirety, nor the prior art as a whole, suggests the combination claimed, the invention is non-obvious. *Fromson v. Advance Offset Plate, Inc.*, 225 USPQ 26 (Fed. Cir. 1985).

In the present application, however, the cited reference, when considered in its entirety, does not disclose or suggest the combination asserted by the Examiner.

With regard to Claims 3, 5 – 8, 13, 18 and 27: For the reasons previously set forth regarding claim 1, it is submitted that Drevik does not disclose or suggest the configurations set forth in claims 3, 5 – 8, 13, 18 and 27.

With regard to claims 7 and 8: For the reasons previously set forth, Drevik does not disclose or suggest the configurations set forth in claim 1. In addition, Drevik does not teach a configuration where the medial section of said deformation-control member has a medial section width of at least a minimum of about 2 mm and not more than about 45 mm. Drevik also does not teach a configuration where the medial section of said deformation-control member has a medial section length of at least a minimum of about 50 mm and not more than about 300 mm.

In the Office action, the Examiner has relied on *In re Boesch and Slaney.* It is submitted that this reliance is inappropriate.

The court *In re Antonie,* 195 USPQ 6 (CCPA 1977) noted that an assertion that it would always be obvious or ordinary skill in the art to try varying every parameter of a system in order to optimize the effectiveness of the system is improper, "if there is no evidence in the record that the **prior art** recognized that particular parameter affected the result." (emphasis added). Thus, the court made it clear that the recognition of a particular parameter as a result-effective variable must come from the cited reference, i.e., in this case Drevik.

The Office action, however, fails to provide any evidence as to how Drevik discloses that the dimensions of the medial section (where the stiffening members avoid intersecting) are result-effective variables. To the contrary, it is readily apparent that Drevik does not disclose or suggest such a proposition. Drevik at paragraph **[0046]** states:

> [0046] At least the longitudinal edge portion **18, 20** of the absorbent article may be made profiled and may include spacing means arranged at a distance from each other along the length of the longitudinal edge portion **18, 20** to create fluid conducting channels. The longitudinal edge portion **18, 20** may be made profiled by a groove compression of the topsheet **36** or by a groove compression of a suitable part of the absorbent core **12**. The groove compression compresses the material in certain parts with a certain distance between the compressed parts, and the spacing means consists of the uncompressed parts. The longitudinal edge portion **18, 20** may also be made profiled by inserting a distance material in the topsheet **36** or in the absorbent core. The profiling of the absorbing article is not limited to the longitudinal edge portion **18, 20**, but the whole upper surface may be profiled by any of the above described techniques. (emphasis added)

Thus, Drevik clearly teaches that a lack of grooves or other spacing means in the medial section is not a result-effective variable. Only by using impermissible "hindsight" and by employing appellant's disclosure as an instruction guide for picking and choosing disparate elements from a universe of possible features would the person of ordinary skill be led to the modifications needed to synthesize the configurations of the claimed invention. In the absence of appellant's disclosure, however, the required changes would be unapparent and unobvious to the person of ordinary skill.

For the above reasons, it is submitted that claims 7 – 8 are patentable over Drevik, and the Examiner's action under 35 U.S.C. §103 should be reversed.

With regard to claim 13: For the reasons previously set forth, Drevik does not disclose or suggest the configurations set forth in claim 1. In addition, Drevik does not teach a configuration having first and second arrays of stiffening elements which have a first and second alignment angles which are at least a minimum of about 15 degrees and not more than a maximum of about 75 degrees, as called for by the presented claim 13. To the contrary, the spacers taught by Drevik are aligned parallel to the length dimension or parallel to the width dimension.

Again, only by using **impermissible** "hindsight" and by employing appellants' disclosure as an instruction guide for picking and choosing disparate elements from a universe of possible features would the person of ordinary skill be led to the modifications needed to synthesize the configurations of the claimed invention. In the

absence of appellants' disclosure, however, the required changes would be unapparent and unobvious to the person of ordinary skill.

For the above reasons, it is readily apparent that claims 7 – 8 are patentable over Drevik, and the Examiner's action under 35 U.S.C. §103 should be reversed.

With regard to claim 27: For the reasons previously set forth, Drevik does not disclose or suggest the configurations set forth in claim 1. In addition, Drevik does not teach a configuration having first and second arrays of stiffening elements which have a first and second alignment angle which is at least about 15 degrees and not more than about 75 degrees. Drevik also does not teach a configuration where the first array of embossment elements thereby has a first fishbone configuration, and the second array of embossment elements has a second fishbone configuration which is counter-positioned relative to the first array of embossment elements, as called for by the currently present claim.

The Examiner has again relied on *In re Boesch and Slaney.* It is submitted that this reliance is again inappropriate.

The court in *In re Antonie,* 195 USPQ 6 (CCPA 1977) noted that an assertion that it would always be obvious to one of ordinary skill in the art to try varying every parameter of a system in order to optimize the effectiveness of the system is improper if there is no evidence in the record that the **prior art** recognized that particular parameter affected the result. Thus, the court made it clear that the recognition of a particular parameter as a result-effective variable must come from the cited reference, i.e., in this case Drevik.

The Office action, however, fails to provide any evidence as to how Drevik discloses that the angles of the stiffening elements are result-effective variables. The Office action also fails to provide any evidence as to how Drevik discloses that the counterpositioned fishbone configurations of the first and second arrays of stiffening elements are a "result-effective" variable. To the contrary, it is readily apparent that Drevik does not disclose or suggest such a proposition.

Only by using **impermissible** "hindsight" and by employing appellants' disclosure as an instruction guide for picking and choosing disparate elements from a universe of possible features would the person of ordinary skill be led to the modifications needed to synthesize the configurations of the claimed invention. In the absence of appellants' disclosure, however, the required changes would be unapparent and unobvious to the person of ordinary skill.

It is, therefore, readily apparent that a proper consideration of Drevik fails to suggest Appellants' claimed invention. Accordingly, the rejection of the claims as being unpatentable over Drevik under 35 U.S.C. §103, should be reversed.

Grounds 4

It is respectfully submitted that Claims 12, 16 and 24 – 26 are patentable over U.S.P. Publication 2002/0040212 to Drevik (Drevik), in view of U.S.P. 6,222,092 to Hansen et al. (Hansen). Accordingly, the Examiner's actions under 35 U.S.C. §103(a) should be reversed.

With regard to Claims 12, 16 and 24 – 26: For the reasons previously set forth regarding claim 1, it is submitted that Drevik does not disclose or suggest the configurations set forth in claims 12, 16 and 24 – 26.

With regard to claim 12: For the reasons previously set forth, Drevik does not disclose or suggest the configurations set forth in claim 1. In addition, a proper combination of Drevik and Hansen does not teach a configuration where the stiffened region provides a first fishbone array of embossment elements, and at least a second fishbone array of embossment elements; and the second array of embossment elements are arranged in a longitudinally opposed, oppositely facing, counter-position relative to the first array of embossment elements; as called for by the presented claim.

Drevik teaches structures pertaining to channels produced by spacers or grooves. In contrast, Hansen teaches structures pertaining to barriers produced by loops raised up from a slitted sheet. The structures taught by Drevik and Hansen significantly differ from each other, and are directed to significantly different objectives. As a result, when

considered by a person of ordinary skill, the references would not motivate the person of ordinary skill to make the combination urged by the Examiner.

Drevik teaches structures pertaining to channels produced by spacers or grooves. In contrast, Hansen teaches structures pertaining to barriers produced by loops raised up from a slitted sheet. The structures taught by Drevik and Hansen significantly differ from each other, and are directed to significantly different objectives. The slits taught by Hansen are not stiffening elements, and do not correspond to the spacers, channels or grooves desired by Hansen. Thus, when considered by a person of ordinary skill, the references would not motivate the person of ordinary skill to make the combination urged by the Examiner. Even if one assumes for the sake or argument that the slits and loops taught by Hansen would be suitable for the structures taught by Drevik, a proper combination of the references would not provide the alignments of the fishbone arrangements, relative the longitudinal ends of the article, that are called for by the presented claim. Instead the converging nose-ends and diverging tail-ends would be aligned along the lateral, transverse direction.

Only by using **impermissible** "hindsight" and by employing appellants' disclosure as an instruction guide for picking and choosing disparate elements from a universe of possible features would the person of ordinary skill be led to the modifications needed to synthesize the configurations of the claimed invention. In the absence of appellants' disclosure, however, the required changes would be unapparent and unobvious to the person of ordinary skill.

It is, therefore, readily apparent that a proper consideration of Drevik fails to suggest Appellants' claimed invention. Accordingly, the rejection of the claims as being unpatentable over Drevik under 35 U.S.C. §103, should be reversed.

With regard to claim 13: For the reasons previously set forth, neither Drevik nor Hansen discloses or suggests the configurations set forth in claim 1. In addition, a proper combination of Drevik and Hansen does not teach a configuration where the first and second arrays of stiffening elements have respective first and second alignment angles, which are at least a minimum of about 15 degrees and not more than a maximum of about 75 degrees, as called for by the presented claim.

Drevik teaches structures pertaining to channels produced by spacers or grooves. In contrast, Hansen teaches structures pertaining to barriers produced by loops raised up from a slitted sheet. The structures taught by Drevik and Hansen significantly differ from each other, and are directed to significantly different objectives. The slits taught by Hansen are not stiffening elements, and do not correspond to the spacers, channels or grooves desired by Hansen. Thus, when considered by a person of ordinary skill, the references would not motivate the person of ordinary skill to make the combination urged by the Examiner. Even if one assumes for the sake of argument that the slits and loops taught by Hansen would be suitable for producing the structures desired by Drevik, it is readily apparent that the resulting channels around and through the multiplicity of individual loops would not correspond to original alignments of the slits. Similarly, the loops would displace and their final distribution would not correspond to original alignments of the slits. As a result, a proper consideration of the cited references would not provide the angle alignments that are called for by the presented claim. It is, therefore, readily apparent that a proper consideration of Drevik and Hansen would not provide the configuration of stiffening elements called for by the presented claim.

Only by using **impermissible** "hindsight" and by employing appellants' disclosure as an instruction guide for picking and choosing disparate elements from a universe of possible features would the person of ordinary skill be led to the modifications needed to synthesize the configurations of the claimed invention. In the absence of appellants' disclosure, however, the required changes would be unapparent and unobvious to the person of ordinary skill.

It is, therefore, readily apparent that a proper consideration of Drevik fails to suggest Appellants' claimed invention. Accordingly, the rejection of the claims as being unpatentable over Drevik under 35 U.S.C. §103, should be reversed.

With regard to claims 24 – 26: For the reasons previously set forth, Drevik does not disclose or suggest the configurations set forth in claim 1. In addition, a proper combination of Drevik and Hansen does not teach a configuration

wherein said absorbent body further includes a perimeter embossment located proximally adjacent at least a portion of a terminal, perimeter edge of the absorbent body, as called for by the presented claim. A proper combination of Drevik and Hansen also does not teach a configuration wherein said embossment elements substantially avoid intersecting the perimeter embossment wherein said embossment elements include relatively outboard end sections which are curved to substantially avoid intersecting the perimeter embossment.

Only by using **impermissible** "hindsight" and by employing appellant's disclosure as an instruction guide for picking and choosing disparate elements from a universe of possible features would the person of ordinary skill be led to the modifications needed to synthesize the configurations of the claimed invention. In the absence of appellant's disclosure, however, the required changes would be unapparent and unobvious to the person of ordinary skill. As a result, when compared to the configurations called for by Appellants' presented claims, the structures taught by a proper combination of Drevik would remain less able to provide desired regions of controlled flexibility and bending, and would be less able to provide desired levels of fit and comfort.

It is, therefore, readily apparent that a proper combination of Drevik and Hansen would not teach Appellants' claimed invention. Accordingly, the rejection of the claims as being unpatentable over Drevik under 35 U.S.C. §103, should be **reversed**.

CONCLUSION

For the reasons set forth in the above remarks, it is respectfully submitted that the Examiner's rejections under 35 U.S.C. §102 based on Drevik or Hansen should be reversed. It is also submitted that the Examiner's rejections under 35 U.S.C. §103 based upon Drevik, Hansen, or any proper combination thereof, should be reversed. It is respectfully submitted that Appellants' claimed invention is neither disclosed nor suggested by the cited references. Additionally, the Examiner has not established a *prima facie* case that the particular combinations of components called for by Appellants' claims would be suggested by a proper combination of the cited references. To the contrary, it is readily apparent that when each cited reference is considered in its

entirety and each reference is taken as a whole, a proper combination of the cited references would not teach Appellants' claimed invention. Only in light of Appellants' present disclosure and the impermissible use of hindsight would a person of ordinary skill be directed to the significant changes and modifications needed to reconfigure the various components to arrive at Appellants' claimed invention. It is, therefore, readily apparent that the configurations called for by Appellants' currently presented claims are patentable over cited references.

Accordingly, it is respectfully submitted that Claims 1 and 3 – 27 are in allowable condition, and that the Examiner's actions should be reversed.

Please charge the fee for filing this Appeal Brief to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875. Any additional prosecutional fees which are due may also be charged to deposit account number 11-0875.

Respectfully submitted,
TERESA M. ZANDER, ET AL.

By: Paul Yee

Paul Yee
Registration No. 29,460
Attorney for Appellants

KIMBERLY-CLARK CORPORATION
401 North Lake Street
Neenah, Wisconsin 54956
Telephone: 920-721-2435

CERTIFICATE OF TRANSMISSION

I, Judith M. Anderson, hereby certify that on June 27, 2006 this document is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (571) 273-8300.

Typed or printed name of person signing this certificate:

Judith M. Anderson

Signature:

Judith M Anderson

CLAIMS APPENDIX

1. An article having a longitudinal direction, a transverse cross-direction, a longitudinal centerline, and a transverse centerline, the article comprising a deformation-control member which has a pair of longitudinally-opposed half-portions positioned on opposite sides of the transverse centerline, a medial section, and a stiffened region;

the article, when in its plan view condition, having a configuration wherein

said stiffened region includes a first array of individual, stiffening elements, and at least a second, differently arranged array of individual, stiffening elements;

said first array of stiffening elements is located in a corresponding first, longitudinal half-portion of the deformation-control member and has a first, convergently arranged nose-end, and a first, relatively divergently arranged tail-end;

said first nose-end of the first array is positioned toward a central region of the article, said first tail-end of the first array is positioned to diverge toward a first longitudinal end region of the article, with the nose-end and tail-end of the first array aligned along the longitudinal direction;

said first array of stiffening elements is configured to substantially avoid intersecting in said medial section of said deformation-control member;

said second array of stiffening elements is located in a corresponding second, longitudinal half-portion of the deformation-control member and has a second, convergently arranged nose-end, and a second, relatively divergently arranged tail-end;

said second nose-end of the second array is positioned toward the central region of the article, said second tail-end of the second array is positioned to diverge toward a second longitudinal end region of the article, with the nose-end and tail-end of the second array aligned along the longitudinal direction;

the second end region of the article is located longitudinally opposite the first end region of the article;

said second array of stiffening elements is configured to substantially avoid intersecting in said medial section of said deformation-control member; and

said second array of stiffening elements have a counter-positioned configuration which is in a longitudinally opposed, oppositely aligned arrangement, relative to the first array of stiffening elements.

2. (canceled)

3. An article as recited in claim 1, wherein

said first array of stiffening elements includes a first array of embossment elements; and

said second array of stiffening elements includes a second array of embossment elements.

4. An article as recited in claim 1, wherein said deformation-control member is configured to provide at least a portion of an absorbent body.

5. An article as recited in claim 4, wherein said deformation-control member is configured to provide at least a shaping layer portion of said absorbent body.

6. An article as recited in claim 4, wherein

said article further includes a baffle and a liquid permeable cover; and

said absorbent body is sandwiched between said baffle and cover.

7. An article as recited in claim 1, wherein said medial section of said deformation-control member has a medial section width of at least a minimum of about 2 mm and not more than about 45 mm.

8. An article as recited in claim 7, wherein said medial section of said deformation-control member has a medial section length of at least a minimum of about 50 mm and not more than about 300 mm.

9. An article as recited in claim 1, wherein
said stiffening elements have a width dimension and a relatively longer length dimension; and
a majority of the stiffening elements are substantially continuous along their length.

10. An article as recited in claim 9, wherein at least some of the stiffening elements are discontinuous.

11. An article as recited in claim 10, wherein the discontinuous stiffening elements are located in an intermediate section of the article.

12. An article as recited in claim 1, wherein
the stiffened region provides a first fishbone array of embossment elements, and at least a second fishbone array of embossment elements; and
the second array of embossment elements are arranged in a longitudinally opposed, oppositely facing, counter-position relative to the first array of embossment elements.

13. An article as recited in claim 1, wherein
the first array of stiffening elements have a first alignment angle which is at least a minimum of about 15 degrees and not more than a maximum of about 75 degrees; and
the second array of stiffening elements have a second alignment angle which is at least a minimum of about 15 degrees and not more than a maximum of about 75 degrees.

14. An article as recited in claim 1, wherein
the first array of stiffening elements has a first base-side section and a first complementary-side section.

15. An article as recited in claim 14, wherein said base-side section and said complementary-side section are substantially mirror images of each other.

16. An article as recited in claim 1, wherein the stiffening elements include embossment elements having a depth which provides a caliper percentage of at least a minimum of about 25 % and not more than a maximum of about 95 %.

17. An article as recited in claim 1, wherein the stiffening elements have a length which is at least a minimum of about 10 mm and up to a maximum of about 70 mm.

18. An article as recited in claim 1, wherein the stiffening elements have a separation distance between immediately adjacent stiffening elements, and such separation distance is at least a minimum of about 0.5 mm and not more than a maximum of about 40 mm.

19. An article as recited in claim 1, wherein at least a portion of the stiffening elements are substantially linear.

20. An article as recited in claim 1, wherein at least a portion of the stiffening elements are substantially curvilinear.

21. An article as recited in claim 1, wherein said deformation-control member includes an absorbent body; said absorbent body has a relatively larger shaping layer and a relatively smaller supplemental layer; and said stiffening elements include embossment elements located in the shaping layer.

22. An article as recited in claim 21, wherein said supplemental layer is located adjacent a bodyside of the shaping layer.

23. An article as recited in claim 21, wherein said supplemental layer is located adjacent a garment-facing side of the shaping layer.

24. An article as recited in claim 21, wherein said absorbent body further includes a perimeter embossment located proximally adjacent at least a portion of a terminal, perimeter edge of the absorbent body.

25. An article as recited in claim 24, wherein said embossment elements substantially avoid intersecting the perimeter embossment.

26. An article as recited in claim 25, wherein said embossment elements include relatively outboard end sections which are curved to substantially avoid intersecting the perimeter embossment.

27. An absorbent article as recited in claim 1, wherein

said deformation-control member includes an absorbent body;

said first array of stiffening elements includes a first array of embossment elements; and

said second array of stiffening elements includes a second array of embossment elements;

said first array of embossment elements are located a first portion of said absorbent body;

said second array of embossment elements are located on a second portion of said absorbent body which is longitudinally opposed to said first portion of the absorbent body;

the first array of embossment elements have a first embossment alignment angle which is at least about 15 degrees and is not more than about 75 degrees;

the second array of embossment elements have a second embossment alignment angle which is at least about 15 degrees and is not more than about 75 degrees;

the first array of embossment elements have a first base-side section and a first complementary-side section, said first complementary-side section being substantially a mirror image of said first base-side section;

the second array of embossment elements have a second base-side section and a second complementary-side section, said second complementary-side section being substantially a mirror image of said second base-side section;

said first array of embossment elements thereby having a first fishbone configuration, and said second array of embossment elements thereby having a second fishbone configuration which is counter-positioned relative to the first array of embossment elements;

said first complementary-side section is laterally spaced-away from said first base-side section;

said second complementary-side section is laterally spaced-away from said second base-side section;

said first array of embossment elements avoid entering into the medial section of the absorbent body; and

said second array of embossment elements avoid entering into the medial section of the absorbent body.

EVIDENCE APPENDIX

(none)

RELATED PROCEEDINGS APPENDIX

(none)